

OGC Has Reviewed

Approved For Release 2002/01/24 : CIA-RDP81-00142R000700100019-7DD/A Registry

78-2676

78-3092

MEMORANDUM FOR: Deputy Director for Administration

FROM : Anthony A. Lapham
General Counsel

SUBJECT : Domestic Retirement Separation Travel,
Domestic Relocation Entitlements on
Separation, Domestic Relocation Entitlements
of Dependents of a Deceased Employee.

25X1A

1. On 12 December 1977, the Deputy General Counsel, [REDACTED] met with you, the Deputy Director of Personnel, the Director of Finance, and the SSA/DDA to discuss the draft paper on subject issues. Following the discussion at this meeting, you requested this Office separate the three issues into individual papers and consider the appropriateness of various arguments and suggestions raised during the meeting. Attached at Tabs A, B and C are papers responsive to this request.

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2. Tab A discusses the domestic retirement relocation benefit and concludes that the current Agency practice is improper. Tab B discusses the domestic relocation entitlement of employees separated for reasons other than retirement and concludes that there is no authority which would permit relocation travel for employees involuntarily separated under the DDO reduction exercises. Tab C treats the question of the domestic relocation entitlements of dependents of an employee who dies while stationed in the United States.

3. The development of these papers has been a long and particularly difficult process involving an extensive review of historical records and opinions regarding the creation and early development of our enabling statutes. In addition, our analysis, of necessity, has had to "second guess" the conclusions previously made by senior Agency officials, a task which we do not treat lightly. After a careful review of these memoranda, I concur in the interpretation of the law and the conclusions stated herein.

4. The opinions issued herein are prospective only and apply to any travel or shipment of household goods not actually commenced (i.e., household goods in the hands of the carrier (packed, enroute, or stored) or individuals enroute) as of the date of this memorandum. To rule otherwise would, in our view, be contrary to the general rules of statutory construction and, in addition, would cause enormous administrative confusion and personal hardships.

5. At the 12 December 1977 meeting you suggested that upon conclusion of our re-examination it would be appropriate to reconvene the individuals who attended the initial meeting. Based upon this memorandum, you may wish to initiate steps in that direction.

Anthony A. Lapham

Attachments

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MEMORANDUM FOR: Director of Personnel
Inspector General

FROM : [REDACTED]
Assistant General Counsel

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SUBJECT : Domestic Relocation Entitlements Upon
Retirement

REFERENCES : A. Memo to OGC fm C/AS, dtd 18 Jul 77.
B. OGC 68-0698, dtd 23 Apr 68.
C. Memo to DCI fm OGC, OLC, dtd 23 Aug 67.
D. Memo to Exec. Dir.-Comp. fm DDS, dtd
30 Apr 68.
E. Memo to Exec. Dir.-Comp. fm DDS, dtd
21 May 68.
F. Memo to Exec. Dir.-Comp. fm DDS, dtd
21 Apr 71.

1. (U) In Reference A, the Audit Staff, OIG, requested that we re-examine the legality of the Agency's authority to provide a retirement relocation move at Government expense for employees stationed within the continental United States who retire under the Civil Service Retirement System.

2. (U) A resolution of this question requires an examination of existing Federal statutes which specifically provide or arguably may be interpreted as providing for the payment of such travel and transportation expenses. Basically, three such authorities exist, (a) the general travel and transportation entitlement contained in 5 U.S.C. 5701, et seq., [REDACTED]

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[REDACTED] Each of these authorities will be treated in turn in the following paragraphs. Prior to this discussion it should be noted that the statutory and regulatory authorities of both the Civil Service Retirement System and the [REDACTED]

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5 U.S.C. 5701, et seq.

3. (U) Chapter 57 of Title 5 of the United States Code, establishes the authority for the payment of travel, transportation, and subsistence expenses for Federal employees. Specifically, section 5722, 5723, and 5724 provide respectively, that the Agency, "may pay from its appropriations -- . . . (2) those expenses on the return of an employee from his post of duty outside the continental United States to the place of his actual residence at the time of assignment to duty outside the United States . . ."; "(1) the travel expenses of a new employee . . . from his place of residence at the time of selection or assignment to his duty station . . ."; "(1) the travel expenses of an employee transferred in the interests of the Government from one official station or agency to another for permanent duty." None of the three cited paragraphs, or for that matter any of the remaining sections contained in chapter 57 of Title 5, contains specific authorization for payment of travel associated with involuntary separations or retirements. Similarly, the provisions of the Federal Travel Regulations (FTRs), promulgated by the General Services Administration to implement the provisions of chapter 57, contain no regulatory entitlement of this nature. One must, therefore, conclude that the general travel and transportation authorities contained in Title 5 do not provide for payment of a relocation move in cases of a domestic retirement or involuntary separation. The same conclusion was reached by this Office in Reference B.

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one must conclude by hindsight that it was 22 U.S.C. 1136. This section provides that:

...the Secretary may, under such regulations as he shall prescribe, pay--

(1) the travel expenses of officers and employees of the service, . . .

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(3) the cost of transporting the furniture and household and personal effects of an officer or employee of the service to his successive post of duty and, on termination of this service, to the place where he will reside; . . .

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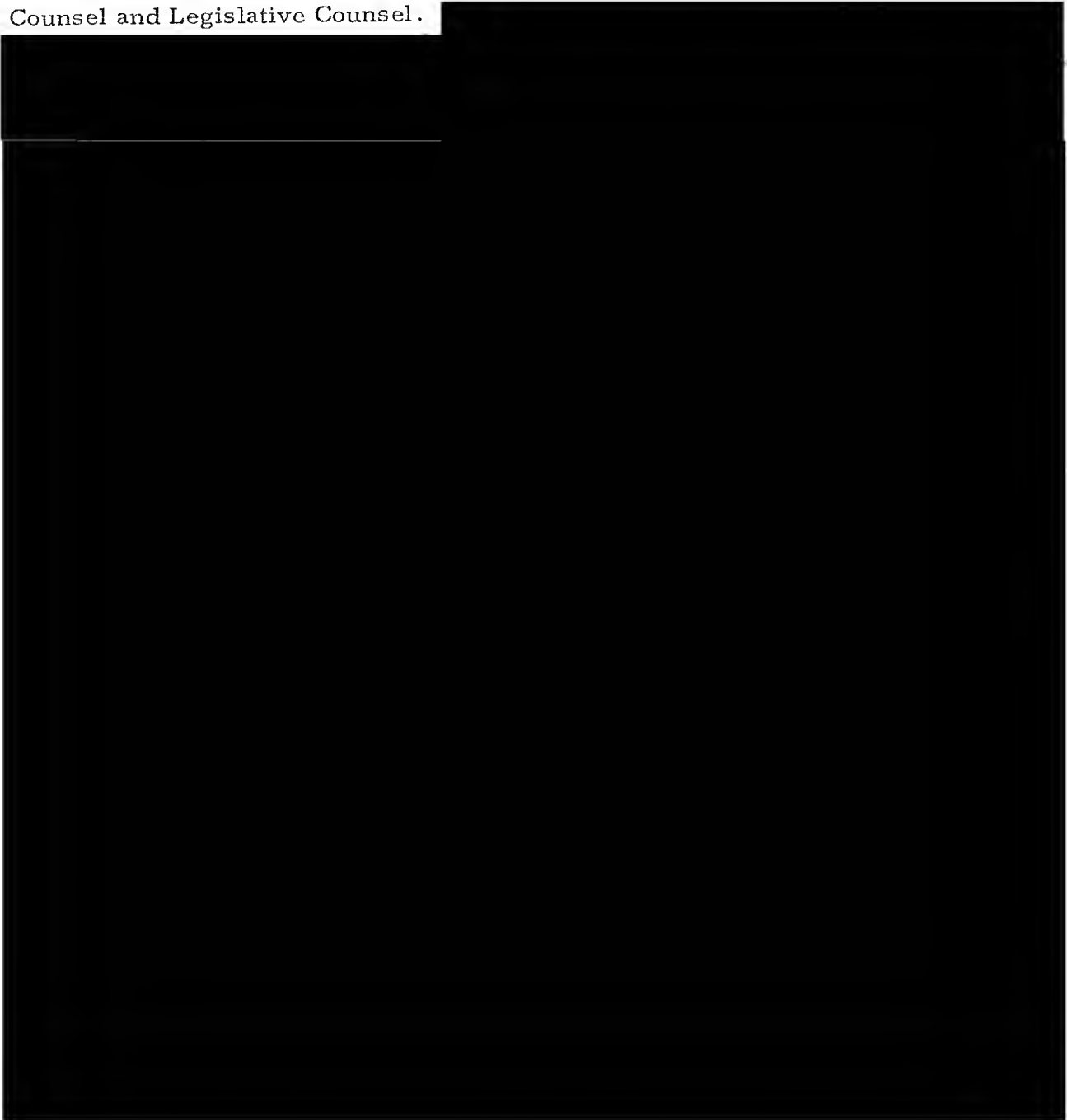
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The advantage in adopting the Foreign Service Act travel authorities is due to the fact that they are not geographically restricted to officers and employees assigned outside the United States as are CIA travel authorities. The fact that Agency travel authorities were retained intact during the congressional discussions and passage of the Overseas Differentials and Allowances Act, Pub. L. 86-707(1960) seems to have presented little concern to the then General Counsel and Legislative Counsel.

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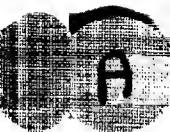
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This Notice is Current Until Rescinded

PERSONNEL

HN [REDACTED]

STATINTL

2 December 1974

AGENCY RETIREMENT POLICY

References: HR [REDACTED] CIA Retirement and Disability System
HR [REDACTED] Civil Service Retirement System

STATINTL

1. This is to inform all employees of certain changes in the referent regulations which I have approved after reviewing our retirement practices.

2. Henceforth, the following policies shall apply with respect to the age for retirement of Agency employees:

a. Participants in the Civil Service Retirement System are encouraged to arrange their affairs so as to retire upon reaching age 60 and are required to retire upon reaching age 65.

b. Participants in the CIA Retirement and Disability System below grade GS-18 are required by law to retire upon reaching age 60. Participants grade GS-18 and above are also encouraged to arrange their affairs so as to retire at age 60; they are required by law to retire upon reaching age 65.

3. Management must be able to forecast the timing of retirements with considerable accuracy in order to manage the utilization and replacement of personnel resources. Therefore, the election discussed in HR [REDACTED] will continue to be an irrevocable one. A participant in CIARDS who elects to remain a participant may not thereafter transfer to the Civil Service Retirement System as an Agency employee. Similarly, a participant who elects not to remain in CIARDS will not thereafter be readmitted to CIARDS. In addition, employees who, upon acquiring 60 months of qualifying service after serving a minimum of 15 years of Agency service, choose not to be designated a participant will not be allowed thereafter to be so designated.

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[REDACTED]
W. E. Colby
Director

DISTRIBUTION: ALL EMPLOYEES (1-6)

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Audit Staff
1201 Key Building

EXTENSION

NO.

DATE

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. Inspector General
2 E 24 Hqs.

19 JUL 1977

19 JUL 1977

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2.

3. OGC
7 D 01 Hqs.

7-20-77

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FORM
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EDITIONS

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OGC 68-0693

23 April 1968

MEMORANDUM FOR: Deputy Director of Personnel

SUBJECT: Travel of Terminated Employee to Place
of Residence at Time of Appointment

1. In our recent discussions you have presented the question as to the authority of this Agency to pay the travel and transportation expenses from Washington, D. C., to the place where an employee resided at the time of his initial employment, on the occasion of his retirement from CIA. The individual was first employed for assignment abroad and his first assignment was of such nature. He has now been with the Agency a number of years, however, and has served both abroad and in the United States. As indicated, his final duty post is Washington, D. C.

2. There is no statute authorizing travel and transportation expenses for retirees from posts of assignment in this country. There is a statute authorizing government agencies to pay travel and transportation expenses of new employees hired at their place of residence in the United States to their post of assignment outside the United States, and return to that place of residence upon completion of the assignment abroad (5 U.S.C. 5722). We are advised by a member of the Office of General Counsel of the General Accounting Office that, although this question has not been ruled on specifically by the General Accounting Office, the language of the statute and the thrust of related opinions of the General Accounting Office are such that GAO believes authority is lacking for the return travel and transportation of an employee whose service did not terminate after the initial assignment outside the United States.

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Associate General Counsel

cc: Admin. Officer/DD/S&T

OGC:RHL:bt

Distribution;

Orig. & 1 - Adse.

1 - TRAVEL Subject file

1 - RHL Signer

✓ 1 - Chrono

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DD/S 63-2015

10 APR 1966

MEMORANDUM FOR: Executive Director-Comptroller

SUBJECT : Administrative Authorities

REFERENCE : Memo dtd 10 Oct 67 for DD/S fr Ex. Dir.-Compt.,
same subj

1. This memorandum contains a recommendation for your approval; such recommendation is contained in paragraph 4.

2. In referent memorandum, you asked for a review to be made of existing Agency authorities in the fields of travel expenses, allowances, and other fringe benefits provided to Agency employees to ensure that they are as favorable as those provided by existing laws enacted for other Government employees in similar circumstances and that I recommend to you what changes, if any, would be appropriate in the light of this principle. Subsequently, a committee, which I had constituted for this purpose, reviewed CIA authorities and the administrative authorities of other agencies and has recommended the adoption of a number of proposals currently authorized under the Foreign Service Act, as amended.

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GENE R. L. BANNERMAN

R. L. Bannerman

Deputy Director

for Support

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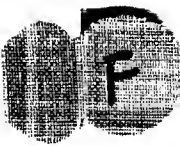
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B-171969, December 21, 1972

OFFICERS AND EMPLOYEES--TRANSFERS--SERVICE AGREEMENTS--
FAILURE TO FULFILL

Former Air Force employee may not be relieved of indebtedness for advanced relocation expenses since under service agreement required by 5 U.S.C. 5724(i), employee's entitlement to such expenses is incident to his remaining 12 months in Government service following effective date of transfer unless separated for reasons beyond his control and acceptable to agency. GAO does not believe agency's failure to assign employee to exact duties set forth in job description would permit his resignation to be considered "separation beyond his control."

B-176889, December 21, 1972

DEBT COLLECTIONS--WAIVER--CIVILIAN EMPLOYEES--COMPENSATION
OVERPAYMENTS--EFFECT OF EMPLOYEE'S FAULT

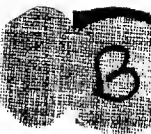
Denial of oversea's employee's claim for waiver of indebtedness arising from erroneous overpayment of \$820 pay for school year is sustained, notwithstanding employee's claim that she was unaware of error. Employee's assertion of lack of understanding concerning leave and earnings statements is refuted by statements made which evinced working knowledge of entries made and, further, employee, with 7-1/2 years Govt. service, should have been aware of \$40 per pay period error and verified correctness of paycheck. Therefore, her failure to do so constitutes fault on employee's part and precludes waiver of indebtedness.

STATINTL

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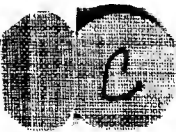
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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

DD/A Registry
 File Travel

FROM:

██████████

 Deputy Director of Personnel

EXTENSION

 NO.

 DATE
 4 OCT 1978

TO: (Officer designation, room number, and building)	DATE		OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
	RECEIVED	FORWARDED		
1. Director of Personnel	5 OCT 1978		J	Jack: The last time we met on the retirement relocation travel legal opinion you indicated that it now would be necessary to meet with Tony Lapham. We await your call to such a meeting.
2. <u>EO/DDA</u>	10/5			
3. Deputy Director for Administration	8 DEC 1978		7	
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